

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

CVS/PHARMACY,

Petitioner,

and

TEAMSTERS LOCAL 727,

Respondent.

Case No. 13-UC-266228

**CVS/PHARMACY’S REQUEST FOR SPECIAL LEAVE TO FILE
A REPLY IN SUPPORT OF ITS REQUEST FOR REVIEW**

Pursuant to Section 102.67(f) of the Board’s Rules and Regulations, CVS/Pharmacy (“CVS”) hereby requests special leave to file a reply in support of its request for review of the Regional Director’s decision dismissing this unit clarification petition.

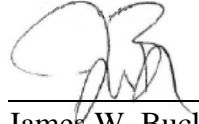
The opposition filed by Teamsters Local 727 (“Local 727”) raises new issues that CVS could not have anticipated and therefore did not address in its request for review. Specifically, Local 727 asserts facts not contained in the Regional Director’s decision, cites cases not contained in the Regional Director’s decision, and makes legal arguments that are different from and contradict those on which the Regional Director relied. It will benefit the Board and facilitate its review of this matter to have CVS’s positions concerning these new matters.

CVS attaches its proposed seven-page reply as Exhibit 1 hereto.

Dated: November 23, 2020

CVS/PHARMACY

By its attorneys,

A handwritten signature in dark ink, appearing to be 'JB', is written over a horizontal line.

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Certificate of Service

I hereby certify that on this 23rd day of November, 2020, I caused one true and correct copy of the foregoing document to be e-filed with the Executive Secretary of the National Labor Relations Board and with Region 13 of the National Labor Relations Board.

Copies of this document have also been served on the following individuals by e-mail:

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jayna@teamsterslocal727.org



James S. Fullmer

EXHIBIT 1

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

CVS/PHARMACY,

Petitioner,

and

TEAMSTERS LOCAL 727,

Respondent.

Case No. 13-UC-266228

CVS/PHARMACY’S REPLY IN SUPPORT OF ITS REQUEST FOR REVIEW

CVS/pharmacy (“CVS”) files this reply, under special leave pursuant to Section 102.67(f) of the Board’s Rules and Regulations, to respond to arguments and alleged facts raised by Teamsters Local 727 (“Local 727” or “Union”) in its opposition (the “Opposition”) to CVS’s Request for Review (the “RFR”) of Regional Director Peter Sung Ohr’s dismissal (the “Decision”) of CVS’s unit clarification petition (the “Petition”).

1. CVS filed its RFR under Section 102.67 as the rules require and as the Decision directed. The Opposition incorrectly claims that CVS should have filed under Section 102.71 instead. Although requests for review of dismissals of election petitions are made under Section 102.71, requests for review of dismissals of UC petitions are made under Section 102.67. Indeed, the rule governing UC petitions explicitly states: “Dismissals of petitions without a hearing shall not be governed by §102.71.” 29 C.F.R. § 102.63(c) (emphasis added); *see also* National Labor Relations Board Casehandling Manual § 11494. This is why the Regional Director ended his Decision as follows: “Pursuant to Section 102.67 of the National Labor

Relations Board's Rules and Regulations, you may obtain a review of this action. . . ." Decision at 3.

2. Local 727's argument that the RFR lacks factual support is equally unavailing. As set forth in the RFR, a UC petition is timely when the parties are in negotiations for a successor contract, with a previous contract having expired, and when the employees sought to be excluded from the unit are statutory supervisors. *See* RFR at 8-12. There is no factual dispute that each of those conditions exists here. The last contract between the parties expired in 2016. *See* Decision at 2; RFR at 3; Opposition at 7. The parties are currently in negotiations for a new contract. *See* Decision at 2; RFR at 9; Opposition at 3. CVS alleges that certain workers are statutory supervisors and must be excluded from the bargaining unit. *See* Decision at 2; RFR at 1; Opposition at 5. The only question for the Board is whether, given these uncontested facts, the Regional Director erred in finding that CVS's petition was untimely. To the extent there are relevant factual issues, those should be addressed at a UC hearing and not in a request to review an administrative dismissal of the petition.

3. Local 727's complaint that CVS engaged in "ex parte" communications with the Region is meritless. Opposition at 2 n.2. As is commonplace and proper in this administrative context, both parties here engaged in direct communications with the Board agent.

4. CVS said in the RFR that there is not a single case in the history of the NLRB where a UC petition raising 2(11) issues was dismissed on timeliness grounds except (a) during the initial year after certification, or (b) where a CBA was in effect. Local 727 in its Opposition did not contend otherwise, as it could not since there is no such case. Every case cited by Local 727 in which the Board found a UC petition seeking to exclude 2(11) supervisors untimely either took place in the first year after an election or after the parties had agreed on a contract. *See*

Dixie Elec. Membership Corp., 358 NLRB 1089, 1093 (2012) (“The UC petition is untimely. The petition was filed on July 21, 2011. It was filed during the term of the 11-15 CBA, which was executed between February 28 and March 22, 2011.”); *Edison Sault Elec. Co.*, 313 NLRB 753, 754 (1994) (“[T]he issue of unit clarification was introduced for the first time almost 2 months after the contract was ratified.”); *Grancare, Inc.*, 331 NLRB 123, 123 (2000) (dismissing UC petition filed two weeks after unit certified); *Arthur C. Logan Mem’l Hosp.*, 231 NLRB 778, 778-79 (1977) (dismissing UC petition filed after contract executed, “without prejudice to the filing of a clarification petition at an appropriate time”). In the *Washington Post* case, the Board took it as a given that UC petitions will be timely outside of these two time periods. It noted that prior cases had seen the dismissal of petitions “after a contract had been agreed to” but “without prejudice to [the petition’s] being filed at an appropriate time” – i.e., after the contract had expired. *Washington Post Co.*, 254 NLRB 168, 169 n.13 (1981) (citing *Arthur C. Logan Mem’l Hosp.*, 231 NLRB 778, 779 (1977)).

5. Despite this precedent, Local 727 argues that the policy goal of labor relations stability requires the permanent inclusion of statutory supervisors in the bargaining unit. In fact, the applicable Board precedent has considered and rejected this very argument – finding that the interests of stability can justify the possibility of allowing supervisors to remain in a bargaining unit only on a temporary basis, and only in the immediate aftermath of an election or during the term of a CBA. See *Edison Sault Elec. Co.*, 313 NLRB 753, 754 (1994). As stated in the RFR, the only time the Board does (or legitimately can under the Act) give permanent weight to historic factors is for unit placement disputes that do not involve 2(11) supervisors. See *Washington Post Co.*, 254 NLRB 168, 169 (1981) (finding in 2(11) case that the Board “is required to exclude positions from a bargaining unit where the inclusion of those positions would

violate the principles of the Act”). This is because the labor policy the Board applies is what is found in the Act. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 688 (2006) (“[W]e start, as we must, with the words of the statute. We thereafter consider the Act as a whole and its legislative history, applicable policy considerations, and Supreme Court precedent. In so doing, our goal is faithfully to apply the statute”) The Board cannot ignore a statutory mandate like that found in Section 2(11) of the Act in the name of amorphous policy considerations. *See Carpenters Dist. Council of Kansas City (Wadsworth Bldg. Co.)*, 81 NLRB 802, 806 (1949) (“Manifestly, the Board, as the administrative agency charged with the enforcement of the Act, cannot assess the wisdom of, or rewrite or engraft exceptions upon, legislation which represents the considered judgment of Congress on a matter of serious and controversial public policy.”).

On the contrary, the Board has specifically found that the involvement of statutory supervisors in a union’s affairs is destructive of sound labor relations. According to Local 727:

Team Leaders have actively participated in the ongoing negotiations since 2016. In fact several Team Leaders have participated as members of the Union’s bargaining committee including three Team Leaders who participated in the ongoing negotiations. Many of the proposals, movement, and agreements reached by parties in negotiations is a direct result of the Team Leaders inclusion in the bargaining unit and participation.

Opposition at 7 n.8. The Board has held that the presence of statutory supervisors on a union negotiating team taints the bargaining process:

Thus, active participation in the affairs of a labor organization by supervisors employed by the employer with whom that labor organization seeks to bargain can give rise to question about the labor organization’s ability to deal with the employer at arm’s length. . . . Active participation by the employer’s own supervisors may, in a given case, contravene either or both of these legitimate interests. Indeed, we have held that an employer has a duty to refuse to bargain where the presence of that employer’s supervisors on the opposite side of the bargaining table poses a conflict between those interests.

Sierra Vista Hosp. Inc., 241 NLRB 631, 633 (1979).

6. Local 727 asserts that the untimeliness of the Petition is not permanent, but instead the Petition could be timely at some unknown time in the future after the parties' next CBA (if there ever is one) expires. Opposition at 10 ("CVS must wait until the Parties negotiate their next contract to raise the issue if it so chooses."). This argument finds no support in any Board decision. Rather, it contradicts the cases and principles upon which the Union purports to rely – including the rationale of the Regional Director that Local 727 claims to find compelling. If, as the Regional Director found, the historical inclusion of Team Leaders in the unit now weighs against hearing the Petition, then years from now, after the Team Leaders have been illegally included in the bargaining unit even longer, the Petition can only become more untimely.

In any event, this solution is as untenable (and perhaps as permanent) as the Regional Director's. At a minimum, it would consign statutory supervisors to the bargaining unit indefinitely and likely for many years. The parties have already been bargaining over a new contract for nearly five years, and an agreement is nowhere in sight. According to Local 727, the Petition should be deferred for the length of the remaining negotiations (however long they take) and the length of a new contract (however long that lasts), and only then can the 2(11) supervisors be freed from the unit.

7. Local 727 mischaracterizes the record by asserting that the job duties of Team Leaders have not changed. CVS did not admit this and the Regional Director did not find it. CVS's position was that the issue is irrelevant because the historical job duties of the Team Leaders does not matter when it comes to 2(11) UC petitions. *See Goddard Riverside Cmty. Ctr.*, 351 NLRB 123, 1235 (2007); *Washington Post Co.*, 254 NLRB 168, 168-69 (1981). If it

were relevant, any factual findings as to the historical duties of the Team Leaders would need to be made based on evidence taken at a hearing. This did not happen and it would be inappropriate for the Board to make any such factual findings in the first instance. *See, e.g., Wolf Creek Nuclear Operating Corp.*, 365 NLRB No. 55, at 3 (2017) (remanding matter to the Regional Director to take evidence relevant to statutory question on managerial status). The Regional Director improperly dismissed the Petition administratively merely because CVS did “not assert that there have been recent changes to the job duties of Team Leaders.” Decision at 2 (emphasis added).

8. Likewise, Local 727 seriously distorts the facts to create a false picture of labor stability. From the beginning of negotiations in March 2016, the dispute over Team Leaders has been one of the most significant issues separating the parties. Contrary to the Union’s assertion in the Opposition, CVS did in fact propose eliminating the Team Leader section of the contract. *See* CVS Proposals to Local 727 (Mar. 24, 2016), attached at Exhibit A. The Union refused to bargain, resulting in a Complaint. *See* Complaint and Notice of Hearing in Case 13-CB-175579 (Feb. 23, 2017), attached at Exhibit B. After the Union settled the Complaint, it characterized CVS’s position as a “ridiculous proposal” to “force PICs out of the bargaining unit” (“PIC” means Pharmacist in Charge and is how the Union generally refers to Team Leaders). *See* Bargaining Update Flyer (July 6, 2016), attached at Exhibit C. Even after CVS modified its proposal in January 2020, an event which the Union now claims in its Opposition settled the issue once and for all, the Union filed new ULP charges alleging that CVS was still trying to remove Team Leaders from the bargaining unit. *See* March 12, 2020 ULP Charge, attached at Exhibit D. The Union’s March 2020 charge alleged this was a permissive subject of bargaining (hence implying that the proper vehicle to address the issue was via a UC petition). The charge

was dismissed, but the underlying proposals remain unresolved. *See* Denial of Local 727 Appeal (Aug. 8, 2020), attached at Exhibit E.

CVS is not suggesting that the Board make factual findings about these matters. Rather, these facts illustrate that the Union’s Opposition contains false and misleading information, and that the single proposal document the Union submitted does not tell the whole story. As with the issue of recent substantial changes, if these issues are relevant they should be subject to a hearing – not an administrative dismissal.

Most importantly, these facts are not relevant to the timeliness question. The case law establishes a bar to a petition when an agreement is actually reached on an entire contract. *See Edison Sault Elec. Co.*, 313 NLRB 753, 754 (1994) (“[W]here the parties have reached a contract, it would be disruptive for the Board to change the contract midterm.”). No case has held that partial agreements on some issues creates a bar. On the contrary, the Board has held that it is during negotiations that the employer can either file or preserve its later right to file a petition. *See St. Francis Hosp.*, 282 NLRB 950, 951 (1987) (noting that where parties are unable to agree in bargaining on a classification issue a party can either “press the issue” by filing a UC petition or can reserve its rights and file such petition “shortly after the contract is executed, absent an indication that the petitioner abandoned its request in exchange for some concession in negotiations”). CVS and Local 727 are in negotiations now, and many issues stand between them – including the status of Team Leaders. The Petition is therefore timely.

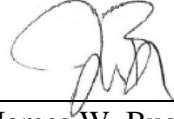
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For all the foregoing reasons, and those stated in the Request for Review, the Board should review and reverse the Decision dismissing the Petition.

Dated: November 23, 2020

CVS/PHARMACY

By its attorneys,

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Certificate of Service

I hereby certify that on this 23rd day of November, 2020, I caused one true and correct copy of the foregoing document to be e-filed with the Executive Secretary of the National Labor Relations Board and with Region 13 of the National Labor Relations Board.

Copies of this document have also been served on the following individuals by e-mail:

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James S. Fullmer

EXHIBIT A

CVS Proposals to Local 727 – 3/24/2016

1. **ARTICLE 1 – RECOGNITION: Change to read:**

The Employer recognizes the union as the sole collective bargaining agent for all registered **staff** pharmacists, graduate non-registered pharmacists, regularly employed part-time graduate and registered pharmacists and student pharmacy interns in the retail drug stores operated by CVS/pharmacy listed on Appendix E, excluding, however, all store managers, assistant store **operations** managers, manager trainees, **pharmacy managers**, all supervisors and guards as defined in the Act and all other employees.

It is recognized that the Employer's managers, assistant **operations** managers, and management trainees who are registered pharmacists, may ~~from time to time perform a limited amount of bargaining unit work; however, it is understood that the intent of the Employer is that such work will not be conducted to the extent of substantially depriving members of the bargaining unit work.~~

2. **Article 2 General: Change to read:**

Section 2.9 Standards
Pharmacy Technicians

In order to protect the health and safety of the public, the assigned pharmacists in each store shall be responsible for addressing the conduct and performance of the technicians that work under their direction. ~~In the event that assistance is needed in a particular situation, the pharmacist should contact their Pharmacy Supervisor and/or HR Business Partner.~~

3. **Section 3.1: Workday and Workweek: Change to read:**

The basic contractual workweek shall consist of forty (40) hours to be worked within (5) days of a Sunday through Saturday workweek, to be administered in accordance with the Fair Labor Standards Act and regulations applicable to exempt employees. ~~No employee shall be required to work more than nine (9) hours in any one (1) workday except to cover for emergencies and vacations. In any event, Pharmacists shall not be required to work more than~~ **fourteen (14)** ~~hours in a workday. A pharmacist who is required to perform extra work shall be compensated at an hourly rate, which will be equal to his/her base weekly salary divided by his/her base weekly hours. Any pharmacist who is required to perform extra work beyond 44 hours in a work week will be compensated an additional \$6/hr for such work.~~

4. **Section 3.3: Meal and Rest Periods: Change to read:**

Each employee shall be given each day one (1) uninterrupted fifteen (15) minute paid rest period, including travel time to the break or rest area for each four (4) hours of work scheduled. No employee shall be required to work more than five (5) continuous hours without an unpaid lunch or dinner period which shall be not less than one-half (1/2) hour and not more than one (1) hours, as agreed upon with the employees. Store

The Company reserves the right to modify, add or delete proposals at any time.

Grant Union
 3/24/16

~~management shall provide the pharmacist with the necessary assistance to meet the needs of the business during break/meal periods.~~

ARTICLE 4 – COMPENSATION; Change to read:

Section 4.2: Extra Work — Full-Time Pharmacists

A pharmacist who is required to perform extra work shall be compensated at an hourly rate, which will be equal to his/her base weekly salary divided by his/her base weekly hours. ~~Any pharmacist who is required to perform extra work beyond 44 hours in a work week will be compensated an additional \$6/hr for such work.~~

ARTICLE 5 - VACATIONS, HOLIDAYS, ABSENCE LEAVES - Section 5.1: Length of Vacation; Change to read:

Each regular employee covered by this contract who meets the qualifications shall be entitled to a vacation with pay in accordance with the following schedule:

Number of Completed Years of Continuous Service - Number of Weeks of Vacation With Pay

ALL REGULAR FULL-TIME EMPLOYEES

1 - 4 Years Inclusive 2 Weeks

5 - 9 Years Inclusive 3 Weeks

10 or More Years 4 Weeks

~~10 - 19 Years Inclusive 4 Weeks~~

~~20 or More Years 5 Weeks~~

As used above, continuous service means uninterrupted, complete years of service since the last employment date.

Section 5.4: Vacation Administration – Add language after first paragraph under Vacation Schedules as follows

1. Vacation Schedules

Vacation requests for regular full time pharmacists are to be requested in full week increments, with a week being defined as Sunday through Saturday, and will be scheduled based on seniority, starting with the first choice of the most senior member of the bargaining unit and progressing through members in descending order to the least senior member. After the first round of choices are awarded, second choices will be awarded beginning with the most senior member of the bargaining unit and progressing through the least senior member of the bargaining unit. This process will continue until all weeks of choices for all members have been considered. In addition, bargaining unit members with 4 or 5 weeks of vacation will be required to take one week of vacation in the first quarter of the year (January, February, March).

The Company reserves the right to modify, add or delete proposals at any time.

Section 5.6: Regular Part-Time Employees -Vacation and Pay - Delete

~~1-4 Years Inclusive — 2 Weeks~~

~~5-9 Years Inclusive — 3 Weeks~~

~~10-19 Years Inclusive — 4 Weeks~~

~~20 or More Years — 5 Weeks~~

~~A regular part-time employee who works 780 hours or more in the preceding payroll year shall be entitled to vacation pay in the amount of 1/52 of his prior payroll year's earnings paid as of January 1 of the current year. Computations of eligibility and payment shall be made by April 1 of the current year and shall be based on continuous service as of January 1. For those hired on or after October 10, 1999, the vacation will be paid pursuant to the following part-time schedule:~~

~~For those part-time employees eligible for vacation under this section who were hired before October 10, 1999, the vacation schedule under Section 5.1 shall continue to apply.~~

Section 5.7: Holidays Recognized; Change to read:

1. Pharmacists assigned to stores are expected to equitably split holiday assignments. For bargaining unit members hired prior to May 2, 2010, no regular full-time pharmacist shall be required to work on Thanksgiving, Christmas, or New Year's Day, unless otherwise volunteered and except that full-time employees with less than five (5) years of continuous service as a pharmacist may be required to work New Year's Day up to nine (9) hours, not to exceed 6:00 p.m. No more than one (1) regularly assigned full-time pharmacist, per pharmacy, shall be required to work up to four (4) hours or past 2:00 p.m. on Memorial Day, Fourth of July, or Labor Day unless otherwise volunteered, and except employees with less than five (5) years of continuous service as a pharmacist may be required to work up to nine (9) hours, not to exceed 6:00 p.m. on such holidays.

Nothing herein shall limit holiday work by part-time pharmacists. No pharmacist shall be required to work past 6:00 p.m. on Christmas Eve or New Year's Eve, provided that such pharmacist will continue working until the customers at the pharmacy are served.

2. Holiday Qualifications and Holiday Pay

B. Part-Time Employees: Change to read:

Regular part-time employees who qualify shall receive holiday pay in the amount of five (5) **four (4)** hours of pay in addition to the hours worked that week.

Section 5.10: Personal Days Off -- Full-Time With 1 Year; Change to read:

All regular full-time employees with one (1) year of service shall receive 3 days **personal time equal to 24 hours** off each calendar year. ~~These days off shall be taken at the discretion of~~

The Company reserves the right to modify, add or delete proposals at any time.

the employee. ***The personal time taken shall be as mutually agreed upon by the Employer and the employee.*** Each eligible full-time employee shall receive 8 (eight) hours of Paid Time Off for each personal day.

ARTICLE 6 - OTHER BENEFITS - Section 6.2: Optical Plan – go to company plan

~~The Employer agrees to make a monthly contribution to cover the premium and administrative costs for each full-time pharmacy employee who has completed one (1) year of service in order to provide cost-free family membership in the Optical Program sponsored by Local 727 Health and Welfare Fund. Such contribution shall be calculated using the VSP premium charged to the fund rounded up to the nearest dollar. The Fund shall notify CVS of any change to the contribution amount.~~

ARTICLE 11 - TEAM LEADERS – Remove

~~The Employer may designate staff pharmacists as Team Leaders. Team Leaders shall be bargaining unit members and shall perform bargaining unit work, primarily filling prescriptions.~~

~~Team Leaders shall perform those duties as may be assigned by the Employer. Such duties may include: budget responsibilities; work flow supervisor; directing the pharmacy staff; monitoring product sources, generic utilization, marketing promotions, competitor pricing, inventory control, pharmacy reports; administration of company programs/policies; training; recommending personnel-related action; communication to the pharmacy staff; and other duties. Team Leaders shall not be responsible for the decision to hire, discharge or otherwise discipline other pharmacists. Work schedules of full-time staff pharmacists, including Team Leaders, shall be rotated in an equitable manner in regard to starting and ending times and weekend work, provided the needs of the business are met.~~

~~The Employer shall have the right to develop, modify or terminate an incentive pay plan for Team Leaders during the term of the Agreement.~~

~~A Team Leader with an evaluation of satisfactory or above, employed more than twelve months as a Team Leader, and who chooses to be a staff pharmacist shall have preference over pharmacists who are not regularly assigned to a pharmacy as a staff pharmacist (i.e. undistributed pharmacists) with the Company for an available staff pharmacy vacancy. Nothing herein shall limit the Employer's right to demote or transfer pharmacist as provided in Section 7.7 of this labor agreement. The Employer within its sole discretion may modify (except as specifically limited herein this section) or terminate the Team Leader program during the term of this Agreement. However, the Employer shall notify the Union or Communication Committee of any major change or termination of the Team Leader program.~~

ARTICLE 8 – merge Communications and Staffing Committees into one Committee; Change to read:

Section 8.7: Communications **Joint** Committee

~~A mutually acceptable committee shall be established in order to foster improved communication between representatives of the Employer and pharmacists. Said committee shall not discuss contractual or grievance matters. Quarterly meetings with up~~

The Company reserves the right to modify, add or delete proposals at any time.

~~to 3 Union and Employer representatives shall be held on mutually agreeable dates. Both parties are committed to working together to ensure regular scheduling of these meetings. Upon the request of either party, the quarterly meeting shall be scheduled within six (6) weeks.~~

The Company and the Union recognize the importance of qualified and trained technicians to the effective operation of the pharmacy. To that end, a joint committee of Pharmacists and Pharmacy Supervisors will be established to review issues concerning Pharmacy Support Staff. The purpose of the committee is to help ensure:

- 1) appropriate support staff hours
- 2) appropriate training and qualifications of support staff
- 3) fair and equitable assignments of support staff

The committee is authorized to make non-binding recommendations to management regarding staffing levels and hours, scheduling, technician training, certification, retention and other support staff issues. **Said committee shall not discuss contractual or grievance matters.** The joint committee will meet quarterly, or as mutually agreed, and will be composed of up to **3 Union and Employer representatives** % Pharmacy Supervisors and %bargaining unit pharmacists (to include one (1) Union Representative), equally selected by management and the union.

ARTICLE 12 - MIDNIGHT PHARMACY OPERATIONS: Delete

~~1. Premium Pay: Pharmacists shall receive Two Dollars and Fifty Cents (\$2.50) per Hour for all hours worked from 10:00 p.m. to 12:00 a.m.~~

~~2. Scheduling: The Employer shall use its best effort to provide part-time Pharmacist assistance in order to assist regular full-time pharmacists with work shifts ending at midnight. Shift ending at midnight shall be distributed equitably amongst involved fulltime pharmacists when appropriate.~~

ARTICLE 14 - TERM Section 14.1: Initial Term; Change to read:

This agreement shall become effective on **May 7, 2016** and shall expire at 1:00 am on **May 4, 2019**.

1. Appendix A: Compensation: negotiate wage increase

- 1) Discuss cost of dues for interns
- 2) Delete the following language:

~~Re: Teamsters Local Union No. 727 Legal and Educational Assistance Fund:~~

~~In conjunction with the most recent collective bargaining negotiations, the parties agree to this Letter of Understanding for the term of the Collective Bargaining Agreement: May 4, 2013 through May 7, 2016.~~

The Company reserves the right to modify, add or delete proposals at any time.

~~The Employer shall contribute to Teamsters Local Union No. 727 Legal and Educational Assistance Fund on account of each regular full-time employee covered by this Agreement the following:~~

~~Commencing May 4, 2013\$68.00 per month~~

~~Such rate shall continue except as adjusted by the Board of Trustees. The~~

~~Employer shall contribute monthly to Teamsters Local Union No. 727 Legal and Educational Assistance Fund on account of each part-time employee covered by this Agreement the following:~~

~~Commencing May 4, 2013\$.40 per hour~~

~~March 1, 2014, the Trustees may increase contributions to the Fund by no more than \$.05 per hour (\$9 per month). The increase shall be equal to or less than the rate increase for other employers covered by the Teamsters Local Union 727 Master Commercial Parking Industry Agreement.~~

~~March 1, 2015, the Trustees may further increase contributions to the Fund by no more than \$.05 per hour (\$9 per month). The increase shall be equal to or less than the rate increase for other employers covered by the Teamsters Local Union 727 Master Commercial Parking Industry Agreement.~~

~~By the execution of this Agreement, each Employer authorizes the Trustees to enter into appropriate trust agreements necessary for the administration of such funds, and hereby waiving all notice thereof and ratifying all actions already taken or to be taken by such Trustees within the scope of their authority~~

~~It is also agreed that in the event the Employer is delinquent at the end of a month in the payment of its contributions to the Legal and Educational Assistance Funds created under this Agreement, in accordance with the rules and regulations of the Trustees of such Funds, the employees or their representatives shall have the right to take such action as they deem necessary until such delinquent payments are made, and it is further agreed that in the event such action is taken, the Employer shall be responsible to the employee for losses resulting therefrom.~~

3) Update Store Listing

GENERAL (NEW SECTIONS)

- **Arbitration Agreement:**

Waiver language: Nothing in this Agreement shall prohibit the Employer from proposing or entering into a voluntary agreement with an individual employee ("Individual Agreement") to arbitrate any legal claim that is not covered by the Grievance and Arbitration Procedure of this Agreement, nor shall this Agreement affect the enforceability of any such Individual Agreement. The Union recognizes

The Company reserves the right to modify, add or delete proposals at any time.

that the Employer may include as a term of such Individual Agreements a waiver by employees of the right to arbitrate and/or to otherwise litigate claims on a class, collective or representative basis, to the extent such agreements are legally permissible. Nothing herein is intended to impact any employee's ability to avail themselves of the grievance and arbitration procedure in this Collective Bargaining Agreement.

- **Incumbent Background Checks:**

The Employer will administer an Incumbent Background Check program to ensure compliance with DEA standards of prohibiting any employee from access to controlled substances if he/she has been convicted of a felony related to controlled substances. The purpose of the background checks is to continue to meet DEA and other government agencies' guidelines while providing a safe and healthy service to patients and customers. This program will be administered under the same terms and conditions as it applies to other CVS pharmacy employees and as it may change or be amended from time to time.

- **Random drug tests:**

The Employer will administer a random drug test program that may be changed, substituted, altered or amended by the Employer. This program will be administered under the same terms and conditions as it applies to other CVS pharmacy employees.

CVS St #	Union Local	Address	City	St	Zip
8500	727	11201 143rd St	Orland Park	IL	60467
8501	727	8325 Lemont Rd	Darien	IL	60561
8502	727	6351 S Pulaski	Chicago	IL	60629
8504	727	8444 S Pulaski	Chicago	IL	60652
8505	727	6748 W 111th St	Worth	IL	60482
8506	727	8025 S Ashland	Chicago	IL	60620
8507	727	9142 S Chicago	Chicago	IL	60617
8508	727	3156 W 103rd St	Chicago	IL	60655
8511	727	7858 S Halsted	Chicago	IL	60620
8512	727	1 Main St	Park Forest	IL	60466
8513	727	2545 Martin Luther King	Chicago	IL	60606
8514	727	641 W 63rd St.	Chicago	IL	60621
8515	727	1713 S. Ashland	Chicago	IL	60608
8516	727	845 W Wilson	Chicago	IL	60640
8517	727	2418 W Division	Chicago	IL	60622
8519	727	11055 S Western Ave	Chicago	IL	60643
8693	727	1400 Lake St	Addison	IL	60101
8694	727	2722 N Central Ave	Chicago	IL	60639
8695	727	3101 N Clark	Chicago	IL	60657
8698	727	1165 N Clark	Chicago	IL	60610
8699	727	137 S State St	Chicago	IL	60603
8731	727	400 W Madison St	Chicago	IL	60606
8732	727	2053 N Milwaukee Ave	Chicago	IL	60647
8733	727	3552 W Grand	Chicago	IL	60651
8734	727	1801 Golf Rd	Schaumburg	IL	60194
8735	727	3940 W Fullerton	Chicago	IL	60647
8736	727	7216 Circle Ave	Forest Park	IL	60130
8737	727	2414 N Lincoln Ave	Chicago	IL	60614
8738	727	741 W 31st	Chicago	IL	60608
8739	727	1819 N Harlem Ave	Chicago	IL	60707
8740	727	2427 W Chicago Ave	Chicago	IL	60622
8741	727	2634 S Pulaski	Chicago	IL	60623
8742	727	5524 W Cermak Rd	Cicero	IL	60804
8744	727	9139 Broadway	Brookfield	IL	60513
8745	727	771 N Ogden	Chicago	IL	60622
8746	727	300 North Eola Rd	Aurora	IL	60504
8747	727	6150 N Broadway	Chicago	IL	60660
8749	727	3950 W Devon Ave	Lincolnwood	IL	60712
8750	727	4801 N Central	Chicago	IL	60630
8751	727	4051 N Lincoln	Chicago	IL	60618
8752	727	5945 Dempster St.	Morton Grove	IL	60053
8753	727	3637 N Southport	Chicago	IL	60613

Gruen
3/24/16

8755	727	2825 W Devon	Chicago	IL	60659
8756	727	6200 W Higgins	Chicago	IL	60630
8757	727	4001 Main St.	Skokie	IL	60076
8758	727	4540 N Pulaski	Chicago	IL	60630
8760	727	3333 Central St.	Evanston	IL	60201
8761	727	10 South Lewis Ave	Waukegan	IL	60085

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

TEAMSTERS LOCAL 727

and

Case 13-CB-175579

CVS PHARMACY, INC.

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by CVS Pharmacy, Inc. (the Employer). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Teamsters Local 727 (Respondent) has violated the Act by engaging in unfair labor practices.

I

The charge in this proceeding was filed by the Employer on May 4, 2016, and a copy was served on Respondent by U.S. mail on May 6, 2016.

II

(a) At all material times, the Employer, a corporation with a place of business located at approximately 50 stores in the greater Chicago, Illinois, area, has maintained facilities in various States throughout the United States, and has been engaged in the retail sale of Pharmaceuticals and related products.

(b) In conducting its operations annually, the Employer derived gross revenues in excess of \$500,000.

(c) During the period of time described above in paragraph II(a), the Employer purchased and received at its Chicago, Illinois, facilities goods valued in excess of \$5,000 directly from points outside the State of Illinois.

(d) At all material times, the Employer has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

III

At all material times, Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

IV

At all material times, John Coli, Jr., has held the position of Respondent's President and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

V

(a) The following employees of the Employer herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All registered pharmacists, graduate non-registered pharmacists, regularly employed part-time graduate and registered pharmacists and student pharmacy interns in the retail drug stores operated by CVS Pharmacy listed in Appendix E of the parties' most recent collective-bargaining agreement, but excluding all store managers, assistant store managers, manager trainees, all supervisors and guards as defined in the Act and all other employees.

(b) At all material times, Respondent has been the exclusive collective-bargaining representative of the Unit and has been recognized as such by the Employer. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from May 4, 2013, to May 7, 2016.

(c) At all material times, pursuant to Section 9(a) of the Act, Respondent has been, and is, the exclusive collective-bargaining representative of the Unit described above in subparagraph V(a).

VI

(a) In about March 2016, the Employer requested that Respondent bargain collectively about the assignment of managers performing bargaining unit work.

(b) The subject set forth above in paragraph VI(a) relates to the wages, hours, and other terms and conditions of employment of the Unit and is a mandatory subject for the purposes of collective bargaining.

(c) Since about May 2016, Respondent has failed and refused to bargain collectively about the subject set forth above in paragraph VI(a).

VII

By the conduct described above in paragraph VI, Respondent has been failing and refusing to bargain collectively and in good faith with an employer within the meaning of Section 8(b)(3) of the Act.

VIII

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before March 9, 2017, or postmarked on or before March 8, 2017.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **June 12, 2017 at 11:00 a.m. at 219 S Dearborn Street, Suite 808, Chicago, IL 60604**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: February 23, 2017

/s/ Peter Sung Ohr

Peter Sung Ohr, Regional Director
National Labor Relations Board,
Region 13
Dirksen Federal Building
219 South Dearborn Street, Suite 808
Chicago, IL 60604-2027

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 13-CB-175579

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

John Coli Jr., President
Stephanie K. Brinson, Esq., General Counsel
Jayna Brown
Teamsters Local Union No. 727
1300 Higgins Rd Ste 111
Park Ridge, IL 60068-5764

Allison L. Anderson, Esq.
James W. Bucking, Esq.
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210-2600

CVS Pharmacy, Inc.
One CVS Drive
Mail Box #1160
Woonsocket, RI 02895

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

EXHIBIT C



TEAMSTERS LOCAL 727

BARGAINING UPDATE

JULY 6, 2017

CVS PHARMACIST MEMBERS

In an effort to clarify any rumors or misinformation that may be circulating with regards to contract talks between Teamsters Local 727 and CVS management, please note the following:

- The parties last met on May 23, 2017. A summary of the session can be found at <http://www.cvsteamsters.com/bargaining-updates.html>.
- No bargaining has occurred since May 23. The union had offered to meet on June 12 but CVS refused. The union communicated to the federal mediator in early June that it was ready and willing to meet.
- The union has fought hard for the proposals that the pharmacists most want, such as more than a 1.8% wage increase and retro pay.
- At the request of the National Labor Relations Board, the union mailed a 'Notice to Employees' document on June 6, reminding members of their rights under federal labor law.
- CVS has made clear that its priority during these negotiations is to force PICs out of the bargaining unit. The union refused to even discuss such a ridiculous proposal. The labor board charge you may have heard about is solely related to this proposal, and the board believes that the union should—at least—discuss this latest proposal with CVS. The union intends to do so at the next bargaining session.

“While we continue the bargaining process for a new contract, it’s imperative that our members stay strong, stay unified, and keep the lines of communication open,” said John Coli, Jr., President of Local 727. “The union will not back down in its fight for a fair contract.”

As always, if you have any questions, please contact your business agent, Melissa Senatore, at (847) 696-7500 or melissa@teamsterslocal727.org.

TEAMSTERS LOCAL 727 ▫ John T. Coli, Secretary-Treasurer ▫ John Coli Jr., President
1300 W. Higgins Road, Suite 111 ▫ Park Ridge, IL 60068 ▫ (847) 696-7500 ▫ (847) 720-4984 fax ▫ TeamstersLocal727.org

EXHIBIT D



TEAMSTERS LOCAL 727

Affiliated with the International Brotherhood of Teamsters

1300 W. Higgins Road, Suite 111 • Park Ridge, Illinois 60068 • Phone: 847-696-7500 • Fax: 847-720-4984 • www.TeamstersLocal727.org

JOHN COLI, JR.
Secretary-Treasurer

CURT ZIEDRICH
President

March 12, 2020

VIA ELECTRONIC MAIL
& CERTIFIED MAIL

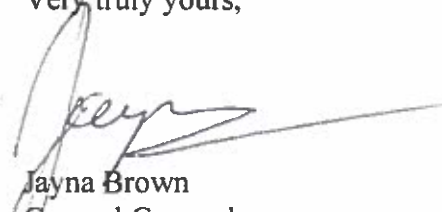
Priscilla Burau
Employee Relations Manager
CVS Caremark
1128 Tower Road
Bensenville, Illinois 60106

Re: Unfair Labor Practice Charge

Dear Ms. Burau:

Enclosed with this letter please find the attached Unfair Labor Practice Charge E-filed with Region 13.

Very truly yours,



Jayna Brown
General Counsel
Teamsters Local 727

Enclosures (1)

cc: Mr. John Coli, Jr., Secretary-Treasurer
Mr. Melissa Senatore, Lead Business Agent
Mr. Jim Bucking (via electronic mail only)

Auto Livery Chauffeurs • Embalmers • Funeral Directors • Apprentices • Ambulance Drivers & Helpers
Taxicab Drivers • Miscellaneous Garage Employees • Car Washers • Greasers • Polishers & Wash Rack Attendants
Motion Picture • Theatrical • Exposition • Convention & Trade Show Employees • Pharmacists • Bus Drivers
Parking Lot Attendants & Hikers • Hotel Industry & Racetrack Industry Employees • Newspaper Magazine • Periodical Salesmen
Drivers • Division Men • District Managers • Checkers • Vendors & Handlers • Electronic Media Workers

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER**DO NOT WRITE IN THIS SPACE**

Case

Date Filed

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer

CVS Caremark

b. Tel. No.

(630) 422-4227

c. Cell No.

f. Fax No.

(401) 652-0939

g. e-Mail

priscilla.burau@cvshealth.com

h. Number of workers employed

135

d. Address (Street, city, state, and ZIP code)

1128 Tower Road

IL Bensenville 60106-_____

e. Employer Representative

Priscilla Burau

Employee Relations Manager

i. Type of Establishment (factory, mine, wholesaler, etc.)

Retail (Drugs)

j. Identify principal product or service

Pharmacy services

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 5

of the National Labor Relations Act, and these unfair labor

practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

--See additional page--

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Jayna M Brown

Title:

International Brotherhood of Teamsters Local 727

4a. Address (Street and number, city, state, and ZIP code)

1300 W. Higgins Rd. Suite 111

IL Chicago 60068-_____

4b. Tel. No.

(847) 696-7500

4c. Cell No.

4d. Fax No.

4e. e-Mail

jayna@teamsterslocal727.org

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Jayna Brown

(signature of representative or person making charge)

Jayna M Brown

Title: General Counsel

(Print/type name and title or office, if any)

Tel. No.

(847) 696-7500

Office, if any, Cell No.

Fax No.

e-Mail

jayna@teamsterslocal727.org

1300 W. Higgins Rd. Suite 111

Address Chicago IL 60068-_____

03/12/2020 11:11:28

(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Basis of the Charge

8(a)(5)

Within the previous six months, the Employer failed and refused to bargain in good faith with the union as the collective bargaining representative of its employees.

Confirmation

You have successfully E-Filed Charge Against Employer. You will receive an E-mail acknowledgement from this office when it receives your submission. This E-mail will note the official date and time of the receipt of your submission. Please save this E-mail for future reference. Please print this page for your records.

Your Confirmation ID is **1000309145**

Date Submitted: 03/12/2020 11:11:28 GMT-0500 (Central Daylight Time)

Form Submitted to Office: Region 13, Chicago, Illinois (<https://www.nlr.gov/region/chicago>)

NOTE: This confirms only that the form was filed. It does not constitute acceptance by the NLRB.

Site Map (<https://www.nlr.gov/sitemap/>)

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No Fear Act (<https://www.nlr.gov/no-fear-act>)

USA.gov (<https://www.usa.gov/>)

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EXHIBIT E



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

August 8, 2020

JAYNA M. BROWN, ESQ.
GENERAL COUNSEL
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS LOCAL 727
1300 HIGGINS RD STE 111
PARK RIDGE, IL 60068-5764

Re: CVS Caremark
Case 13-CA-257908

Dear Ms. Brown:

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied substantially for the reasons in the Regional Director's letter of June 2, 2020.

The charge alleges that CVS Caremark (Employer) failed and refused to bargain in good faith with Teamsters, Local 727 (Union) in violation of Section 8(a)(5) of the National Labor Relations Act (Act). More specifically, the Union's position which was articulated during the Regional Office investigation, is that the Employer engaged in bad faith surface bargaining by (1) not making any movement on its wage proposal since 2016, and (2) by insisting on bargaining to impasse on permissive subjects of bargaining during the parties' negotiation sessions on January 30, March 11 and March 12, 2020. We determined that a departure from the Regional Director's decision was not warranted as the evidence did not support finding that the Employer had engaged bad faith bargaining.

In that regard, with respect to the allegation that the Employer had failed to present modified wage proposals, the investigation established that during the period relevant to this charge, the parties met three times, and during those negotiation sessions, they exchanged proposals, discussed the proposals in detail, reached tentative agreements on several items and exchanged information requests and related documents. In addition, while both parties have stated that further movement on certain items was unlikely, both remained willing to continue to meet. Although the Employer has not "moved" on its wages proposal, the Employer was not obligated to present different proposals.

Section 8(d) of the Act defines the duty to bargain collectively as “the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment,” but such obligation does not compel either party to agree to a proposal or require the making of a concession. In the present case, there was insufficient evidence to conclude that the Employer was motivated by a desire to frustrate agreement by its decision not to move on its wage proposal. Moreover, the Employer has noted that movement on wages would be possible based on other changes in the overall package. Under these circumstances there is insufficient evidence of bad faith bargaining with respect to wages.

With respect to the allegation that the Employer was bargaining to impasse on the permissive subject of Pharmacy Managers being permitted to perform bargaining unit work, it was determined that this language constitutes “assignment of work.” The Board has established that the issue of whether supervisors may perform bargaining unit work is a mandatory subject of bargaining. As such the Employer’s conduct did not violate the Act. See, *Park Manor Nursing Home, Inc.*, 312 NLRB 763, 767 (1993). Accordingly, the appeal is denied.

Sincerely,

Peter Barr Robb
General Counsel



By:

Mark E. Arbesfeld, Director
Office of Appeals

cc: PETER SUNG OHR
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
DIRKSEN FEDERAL BUILDING
219 S DEARBORN ST STE 808
CHICAGO, IL 60604-2027

PRISCILLA BURAU, EMPLOYEE
RELATIONS MANAGER
CVS CAREMARK
1128 TOWER RD
BENSENVILLE, IL 60106

EMILY NASH
FOLEY HOAG LLP
155 SEAPORT BLVD
BOSTON, MA 02210-2050

JIM BUCKING, ESQ.
FOLEY HOAG, LLP
8911 N CAPITAL OF TEXAS
HWY BLD 3 STE 3350
AUSTIN, TX 78759

vrn